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SENATE BILL 03-278

BY SENATOR(S) Reeves, Owen, and Teck;
also REPRESENTATIVE(S) Young, Plant, and Witwer.

CONCERNING THE COLLECTION OF A WATER ADMINISTRATION FEE FROM
USERS OF ADJUDICATED WATER RIGHTS FOR ALLOCATION TO THE
DIVISION OF WATER RESOURCES, AND, IN CONNECTION THEREWITH,
MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 80 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

37-80-121. Water administration fee - cash fund - rules - report - definitions - repeal. (1) FOR PURPOSES OF THIS SECTION:

(a) "FEE" MEANS THE ANNUAL WATER ADMINISTRATION FEE CREATED BY THIS SECTION. FOR PURPOSES OF THIS SECTION, AN ANNUAL WATER ADMINISTRATION YEAR RUNS FROM NOVEMBER 1 TO OCTOBER 31. THE FEE SHALL BE INITIALLY ASSESSED FOR THE PERIOD FROM THE EFFECTIVE DATE OF THIS SECTION UNTIL OCTOBER 31, 2003. THEREAFTER THE FEE SHALL BE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ASSESSED FOR EACH ANNUAL WATER ADMINISTRATION YEAR.

(b) "FUND" MEANS THE WATER ADMINISTRATION CASH FUND CREATED BY THIS SECTION.

(c) "OWNER" MEANS THE OWNER OF AN ABSOLUTE WATER RIGHT THAT HAS BEEN ADJUDICATED FOR:

(I) DIRECT FLOW IN AN AMOUNT OF AT LEAST ONE CUBIC FOOT PER SECOND;

(II) STORAGE IN AN AMOUNT OF AT LEAST ONE HUNDRED ACRE-FEET.

(2) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AN OWNER SHALL BE SUBJECT TO AN ANNUAL WATER ADMINISTRATION FEE IN THE FOLLOWING AMOUNTS:

(I) FOR DIRECT FLOW WATER THAT HAS BEEN ADJUDICATED FOR:

(A) AGRICULTURAL IRRIGATION, RECHARGE, OR STOCK WATERING USE, TEN DOLLARS FOR EACH DECREED WATER RIGHT;

(B) FOR DIRECT FLOW WATER THAT IS NOT SUBJECT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), TWO HUNDRED FIFTY DOLLARS FOR EACH DECREED WATER RIGHT;

(II) FOR STORED WATER THAT HAS BEEN ADJUDICATED FOR:

(A) AGRICULTURAL IRRIGATION, RECHARGE, OR STOCK WATERING USE, TWENTY-FIVE DOLLARS FOR EACH DECREED WATER RIGHT;

(B) FOR STORED FLOW WATER THAT IS NOT SUBJECT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II), ONE HUNDRED DOLLARS FOR EACH DECREED WATER RIGHT;

(b) AN OWNER:

(I) SHALL PAY THE FEE WITHIN THIRTY DAYS AFTER THE DATE THE FEE ASSESSMENT IS RECEIVED;

(II) SHALL NOTIFY THE DIVISION ENGINEER OF THE APPROPRIATE

WATER DIVISION OF THE NAME AND ADDRESS OF ANY NEW OWNER OF THE WATER RIGHTS.

(c) THE STATE ENGINEER SHALL COLLECT THE FEE FROM EACH OWNER AND MAY PROCEED PURSUANT TO SECTIONS 37-92-502 AND 37-92-503 IN SUCH COLLECTION.

(d) THE STATE ENGINEER SHALL NOT ASSESS MORE THAN ONE FEE AGAINST A PARTICULAR DECREED WATER RIGHT IN ANY STATE FISCAL YEAR.

(3) BY RULE, THE STATE ENGINEER MAY DEFINE RELEVANT TERMS AND PROCEDURES AND SHALL ESTABLISH:

(a) A SCHEDULE FOR THE PAYMENT OF THE FEE, WHICH MAY:

(I) VARY BY LOCATION, TYPE OR SIZE OF USE, OR ANY OTHER FACTOR DEEMED NECESSARY BY THE STATE ENGINEER; AND

(II) INCLUDE MONTHLY, QUARTERLY, ANNUAL, SEASONAL, OR OTHER TERMS OF PAYMENT;

(b) (I) A PROCEDURE FOR PROVIDING TO EACH OWNER INDIVIDUAL NOTIFICATION OF THE AMOUNT AND TERMS OF PAYMENT OF THE FEE.

(II) THE STATE ENGINEER MAY UTILIZE THE WATER RIGHTS RESUME AND MAY POST A NOTICE ON THE APPROPRIATE DIVERSION OR STORAGE STRUCTURE TO PUBLICIZE THE EXISTENCE OF THE FEE, INCLUDING A PROCEDURE FOR APPEAL IF THE OWNER BELIEVES THE ASSESSED AMOUNT IS INCORRECT.

(4) THE STATE ENGINEER SHALL TRANSMIT ALL MONEYS GENERATED BY THE FEE TO THE STATE TREASURER, WHO SHALL DEPOSIT THEM IN THE WATER ADMINISTRATION CASH FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. ALL MONEYS CREDITED TO THE FUND AND UNEXPENDED AT THE END OF ANY GIVEN FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND. ALL INTEREST EARNED ON THE INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. MONEYS IN THE FUND SHALL BE APPROPRIATED SOLELY TO THE DIVISION OF WATER RESOURCES AND THE DEPARTMENT OF NATURAL RESOURCES FOR COSTS ASSOCIATED WITH THE STATE ENGINEER'S ADMINISTRATION OF APPROPRIATIVE WATER RIGHTS, INCLUDING COSTS

ASSOCIATED WITH THE IMPLEMENTATION OF THIS SECTION; EXCEPT THAT MONEYS IN THE FUND SHALL NOT BE USED FOR LITIGATION.

(5) THE STATE ENGINEER, IN CONSULTATION WITH INTERESTED PARTIES, SHALL REEXAMINE THE ADMINISTRATION FEES ESTABLISHED IN THIS SECTION AND SUBMIT A REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE DECEMBER 1, 2004, THAT IDENTIFIES THE FOLLOWING:

(a) THE TOTAL AMOUNT OF MONEYS RECEIVED UNDER THE FEE SCHEDULE ESTABLISHED IN THIS SECTION AND THE DISPOSITION, WITHIN THE DIVISION OF WATER RESOURCES, OF SUCH MONEYS;

(b) THE SERVICES PROVIDED BY THE DIVISION IN THE FULFILLMENT OF ITS RESPONSIBILITIES UNDER THIS TITLE THAT CANNOT BE DIRECTLY CORRELATED TO THE ADMINISTRATION OF WATER UNDER THIS SECTION;

(c) ALL BENEFICIARIES OF THE STATE ENGINEER'S WATER ADMINISTRATION ACTIVITIES ESTABLISHED UNDER THIS TITLE;

(d) BENEFICIARIES OF THE STATE ENGINEER'S WATER ADMINISTRATION ACTIVITIES ESTABLISHED UNDER THIS TITLE THAT DO NOT PAY FEES UNDER THIS SECTION;

(e) ALTERNATIVE FUNDING OPTIONS FOR THE STATE ENGINEER'S WATER ADMINISTRATION ACTIVITIES ESTABLISHED UNDER THIS TITLE; AND

(f) MORE COST-EFFECTIVE APPROACHES TO ACHIEVING THE WATER ADMINISTRATION OBJECTIVES IDENTIFIED IN THIS ARTICLE, CONSIDERING THE ACTIVITIES OF BOTH THE STATE ENGINEER AND AFFECTED ENTITIES.

(6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2005.

SECTION 2. 37-92-502 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-92-502. Orders as to waste, diversions, distribution of water.

(5) (c) THE STATE ENGINEER AND THE DIVISION ENGINEERS HAVE AUTHORITY TO COLLECT THE WATER ADMINISTRATION FEE ESTABLISHED IN SECTION 37-80-121.

SECTION 3. 37-92-503, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-92-503. Enforcement - injunction. (8) THE STATE ENGINEER AND THE PARTICULAR DIVISION ENGINEER IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO, THROUGH THE ATTORNEY GENERAL, SHALL COLLECT THE WATER ADMINISTRATION FEE ESTABLISHED IN SECTION 37-80-121. FAILURE BY ANY PERSON TO PAY THE FEE WITHIN THIRTY DAYS AFTER THE DATE THE FEE ASSESSMENT IS RECEIVED SHALL SUBJECT THE PERSON TO PAYMENT OF THE OUTSTANDING DEBT, ACCRUED INTEREST AT ONE AND ONE-HALF PERCENT PER MONTH OF OUTSTANDING DEBT, FEES ASSOCIATED WITH COLLECTION, AND RECOVERY OF REASONABLE ATTORNEY FEES, UNLESS SUCH FEE IS APPEALED AND DETERMINED TO HAVE BEEN IMPROPERLY ASSESSED.

SECTION 4. Appropriation - adjustments in 2003 long bill.

(1) For the implementation of this act, appropriations made in the annual general appropriation act for the department of natural resources for the fiscal year beginning July 1, 2003, shall be adjusted as follows:

(a) The general fund appropriation is decreased by one million four hundred fourteen thousand five hundred thirty-nine dollars (\$1,414,539).

(b) The cash funds appropriation is increased by one million six hundred eighty-nine thousand five hundred thirty-nine dollars (\$1,689,539). Said sum shall be from the water administration cash fund created in section 37-80-121 (4), Colorado Revised Statutes.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2003, the sum of twelve thousand one hundred fifty-eight dollars (\$12,158) and 0.1 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of natural resources related to the implementation of this act. Such sum shall be from cash funds exempt received from the department of natural resources out of the appropriation made in subsection (1) of this section.

SECTION 5. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

John Andrews
PRESIDENT OF
THE SENATE

Lola Spradley
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Mona Heustis
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO